No. 97-1390

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

THE REPUBLIC OF PARAGUAY and
JORGE J. PRIETO, Ambassador of the Republic of Paraguay to the United States, and
JOSÉ MARIA GONZALEZ AVILA, Consul General of the Republic of Paraguay to the United States,
Petitioners,

- v. -

JAMES S. GILMORE III, Governor of the Commonwealth of Virginia, *et al.*,
Respondents.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER BY THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Dated: April 13, 1998

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MOTIONS

The Association of the Bar of the City of New York (the "Association") hereby moves for permission to file this brief as *amicus curiae* in these proceedings.[1] Time is of the essence because the execution of Angel Francisco Breard, which will make this matter moot, is scheduled for tomorrow, April 14, 1998. The Association has been unable to obtain consent from the parties to this proceeding prior to the filing of this brief.

PRELIMINARY STATEMENT

The Association respectfully submits this brief to urge this Court to issue a stay of the execution of Angel Francisco Breard, a national of Paraguay, pending a decision on the merits of the Application of the Republic of Paraguay against the United States filed with the International Court of Justice (the "International Court") on 3 April 1998 (the "Application") as indicated by the International Court in its order entered on 9 April 1998 (the "Order").

The Association believes that the respect for international law which is shared by the world community, as well as the interests of the United States and its citizens, mandates such a stay. In the Order the International Court *unanimously* held that "the United States should take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order . . . . " Order, para.41. The Order is provisional in nature and without prejudice to any decision on the merits by the International Court or by this Court.

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[1] Pursuant to Rule 37(6) of this Court, no counsel for a party to this action authored this brief in whole or in part and no other persons or entities other than the amicus curiae and its counsel made a monetary contribution to the preparation and submission of this brief.

For this Court to ignore the Order of the International Court would gravely prejudice a decision on the merits by the International Court and would evidence disrespect for the rules of law governing all nations. The Association is particularly concerned that failure to defer to the Order would seriously threaten the interests of the United States and its citizens in foreign countries where the rights of Americans depend upon the compliance by foreign nations with the rule of law, including treaties and orders of the International Court.

It is the position of the Association that the interest of the United States in promoting the rule of law and in promoting compliance with Orders of the International Court far outweighs the interest of the Commonwealth of Virginia in not postponing the carrying out of its death sentence.

INTERESTS OF THE AMICUS CURIAE

The Association of the Bar of the City of New York is comprised of 21,000 lawyers admitted to practice in nearly every State and in over 50 nations. Through having followed and analyzed the development of international law and United States constitutional law, the Association has developed significant expertise and understanding in these matters. The Association has been particularly concerned with supporting and defending the rule of law, including international law and the recognition and enforcement of internationally recognized human rights norms in foreign countries.[2] The effectiveness of the Association's efforts in

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[2] The Association has published numerous reports on a variety of human rights issues, including "Report on Hong Kong Mission" (May 23, 1996); "Uganda at the Crossroads -- A Report on Current Human Rights Conditions" (June 17, 1991); "The Inter-American Commission on Human Rights: A Promise Unfulfilled" (December 30, 1992); "Human Rights and the Administration of Justice in Chile" (Mar. 20, 1987); "Torture in Turkey: The Legal

these areas has depended to a significant degree on the respect for the rule of international law by the United States and its courts and political subdivisions.

ARGUMENT

The issues in the proceeding which is now pending before the International Court arise from violations by the Commonwealth of Virginia of the Vienna Convention on Consular Relations, Apr. 24, 1963, TIAS 6820, 21 U.S.T. 77 (the "Vienna Convention"), in failing to notify Angel Francisco Breard of his right to contact the Paraguay consul when he was arrested for a capital offense. At issue is whether Paraguay is entitled to restoration of Breard's situation before the treaty violation occurred. The Order of the International Court was issued simply "to preserve the respective rights of Paraguay and the United States" pending a decision on the merits which should be "reached with all possible expedition." Order, para. 40.

The United States and Paraguay are parties to the Vienna Convention. In subscribing to the United Nations Charter, the United States became a party to the Statute of the International Court of Justice. U.N. Charter, Art. 93. The International Court has the power

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System's Response" (Nov. 1, 1989); "Update on the 1990 Report on the Response by the Turkish Legal System of the Problem of Torture in Turkey" (May 1, 1996); "The Decline of the Rule of Law in Singapore and Malaysia" (July 22, 1993); "The Kosovo Crisis and Human Rights in Yugoslavia" (Jan., 28, 1991); "The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Aug. 26, 1986); "Criminal Justice and Human Rights in Northern Ireland" (Nov. 12, 1987); "Human Rights and the Administration of Justice in Guatemala" (July 2, 1993); "Torture Victim Protection Act" (Oct. 13, 1987); "Human Rights in Cuba" (July 13, 1988); "Human Rights Advocacy in the Philippines: A Report by a Member of a Mission of Inquiry" (Aug,. 11, 1994); "Development of the Legal Profession in Central Asia: A Report from Kyrgyzstan" (Dec. 14, 1994); and "Report on the Mission to Peru, May 1994" (June 10, 1996).

"to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party." Statute of the International Court of Justice, Oct. 24, 1945, Art. 41. Pursuant to Article 94(1) of the United Nations Charter, the United States has "undertake[n] to comply with the decision of the International Court of Justice in any case to which it is a party." Following the filing on 3 April 1998 of the Application of Paraguay, the United States appointed an agent of the government of the United States for this case and appeared at hearings before the International Court on 7 April 1998 in accordance with the rules of the International Court. Order, paras. 11, 13, 16.

The grave question before this Court now is whether the government of the United States and the Commonwealth of Virginia should be permitted, pending a decision by the International Court on the merits, to avoid their obligations under international law. Under the Constitution, treaty obligations are part of "the supreme law of the Land." U.S. Const., Art. VI, cl. 2. Since the judicial power of the United States extends to all cases arising under, inter alia, treaties, U.S. Const., Art. III, Sec. 1, that question becomes whether this Court, by refusing to grant a stay, should enable such avoidance. We submit that this Court should enforce the obligations of the parties under international law.

Indeed, as a matter of U.S. law and as a practical matter in this case, the only governmental body that can enforce the treaty obligations of the United States is this Court.[3]

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[3] The United States argued before the International Court that a stay of execution depends exclusively on the United States Supreme Court and the Governor of Virginia. Order, para. 19. The Governor of Virginia has recently stated that he "is not looking toward the State Department or the International Court for guidance on Tuesday's execution -- only the U.S.Supreme Court." Richmond Times Dispatch, April 11, 1997, "Inmate's Lawyer Files

The Executive Branch seems to have exhausted its resources by sending a copy of the International Court's order to the Governor of the Commonwealth with a "request that you give full consideration" to it -- a request that the Governor has already said he will ignore. Id.

The failure of this Court to take measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision of the International Court, as expressly indicated by that Court, would evidence a profound disrespect for the development of international law and for the International Court and establish a gruesome precedent.

Besides running against the long established efforts of this country to establish the rule of law on this planet and complicating our foreign relations, such a precedent would leave the United States and its citizens at the mercy of similar action by any foreign government. Indeed, the United States itself has in the recent past sought and obtained a provisional indication from the International Court under the Vienna Convention when concerned that the lives of its citizens might be in peril. United States Diplomatic and Consular Staff in Teheran (United States v. Iran) Judgment 24 May 1980, I.C.J. Reports 1980. Surely, the interests of the United States in promoting respect for international law in foreign countries, as well as in the United States, and in protecting itself and its citizens from unlawful actions by foreign authorities dramatically outweighs the interest of the Commonwealth of Virginia in expediting Breard's death sentence at this time.

Appeal; Treaty Rights Hearing is Sought in U.S."

CONCLUSION

For the reasons stated above, the Association respectfully requests that this Court grant a stay of the execution of Angel Francisco Breard which has been scheduled for April 14, 1998, pending a decision of the International Court on the Application of Paraguay.

Dated: April 13, 1998

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robin Deaver, hereby certify under penalty of perjury that on April 13, 1998, I caused a copy of the Motion and Brief Amicus Curiae in Support of Petitioner By the Association of the Bar of the City of New York to be served by first-class mail of the United States Postal Service upon and sent a copy also by telecopy to

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Dated: April 13, 1998
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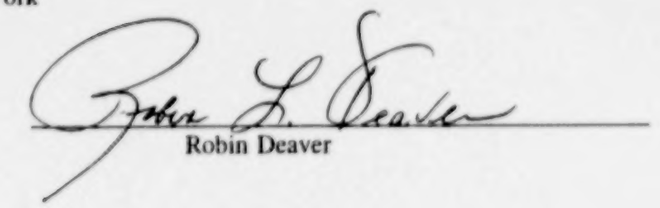

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